IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.330 OF 2004

IN

SUIT NO.223 OF 2004

Homi D. Sanjana & others. ...Plaintiffs.

vs.

1. Kersi Viraf Mehta and others. ...Defendants.

Mr.Sham Diwan with R.S.Jaisinghani i/b. M.M.Merchant, for Plaintiffs.

Mr.Milind Vasudeo i/b. Puranik & co. for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 13th October,2005

P.C.:-

1. This is a Notice of Motion taken out by the plaintiffs claiming an interim order restraining defendant no.6 which is a nationalised bank, from executing the decree passed by the Debt Recovery Tribunal in its favour. In the plaint, the plaintiff is claiming a

decree of declaration that six documents executed by defendant no.1 in favour of defendant nos.2 to 5 are fabricated, illegal, null and void and not binding upon the plaintiffs. Perusal of the plaint specially paragraph no.15 shows that the plaintiffs came to know about the said six documents as also he came to know that the said documents are fraudulent in nature in June,2000. The plaintiffs did file a suit in the City Civil Court in October,2000, but the plaint was returned as the City Civil Court held that it has no jurisdiction to entertain the suit. The plaintiffs, after the plaint was returned, had amended the plaint without there being any order from the Court and then presented the plaint in this Court in the month of August,2003. The plaintiffs themselves have pointed out a judgment of the Supreme Court in the case "Hanamanthappa and another Vs. Chandrashekharappa and others, AIR (1997) 9 Supreme Court Cases 688" wherein the Supreme Court has held that after the plaint is returned to the plaintiff, the plaintiff can amend the plaint and can then present to the proper court, but in such an eventuality the date of institution of the suit is the date on which the plaint is presented before the proper forum. Therefore, so far as this court is concerned the date of institution of this suit is August,2003, and therefore, from the date of knowledge of the plaintiffs that the documents are fraudulent i.e. June,2000 as per the averments in paragraph no.15, the suit is barred by Law of Limitation. Though it was claimed before me that in other parts of the

plaint the plaintiffs have stated that they came to know about the nature of the documents subsequently, in my opinion, those pleadings would be contradictory, because in paragraph no.15 of the plaint in no uncertain terms the plaintiffs are claiming knowledge about the fraudulent nature of the documents in June,2000 and therefore, prima facie it appears that the suit is barred by Law of Limitation.

2. A submission was made that the time spent in prosecuting the suit in the City Civil Court can be excluded under Section 14 of the Limitation Act. For application of Section 14 of the Limitation Act, it has to be proved that the proceedings were instituted and were prosecuted bonafide. Admittedly, though there is a reference to the proceedings in the City Civil Court, there is no averment made in the plaint that the institution of the suit in the City Civil Court was bonafide and it was prosecuted bonafide. Whether the proceedings were instituted in the wrong court bonafide and whether they are being prosecuted bonafide, is a question of fact and therefore, unless the plaintiffs disclose the circumstances and reasons why the suit was instituted in that Court and how it was prosecuted in the pleadings the plaintiffs would not be able to lead evidence to prove those facts. Apart from the provisions of the Civil Procedure Code requiring it, the principles of natural justice also require that the plaintiffs disclose the

circumstances and reasons why the suit was instituted and prosecuted in the previous court and claim that it was done bonafide. It is necessary for the plaintiffs to plead as stated above so that the defendants get an opportunity to contest the same. The Court will not be justified in permitting plaintiffs to claim exemption of time under Section 14 of the Limitation Act, without being satisfied that the material produced by the plaintiffs on record is sufficient to give notice to the defendants that the plaintiffs are claiming exclusion of time and the factors on the basis of which they are claiming the exclusion. In the present case, not only that there is no claim made that the plaintiffs are entitled to exclusion of time under Section 14 of the Limitation Act but also the circumstances under which and the reasons why the suit was filed in the City Civil Court are not disclosed. Perusal of the plaint shows that in fact the plaintiffs are trying to give different dates on which cause of action accrued to the plaintiffs. If one reads the plaint entirely one does not get impression that the plaintiffs intend to seek exclusion of time under Section 14 of the Act. Order 7 Rule 6 of the Civil Procedure Code casts duty on the plaintiffs to disclose the grounds on which exclusion of time is sought. That Rule also confers power on the Court to permit the plaintiffs to claim exclusion of time though the ground for seeking exclusion of time is not clearly stated in the plaint. In my opinion, considering that the power is conferred on the Court by Proviso, the power of the Court contained in the Proviso

cannot be so read as to nullify what is laid down in the main rule. In my opinion, therefore, it will be reasonable to construe the requirement of Rule 6 of Order 7 of the C.P.C. to mean that though a particular ground for seeking exclusion of time is not pleaded in the plaint, the Court can permit the plaintiffs to rely on that ground if the Court is satisfied after perusing the plaint that the pleadings in the plaint are sufficient to give notice to the defendants that the plaintiffs are seeking exclusion of time on this additional ground also. Taking overall view of the matter therefore, as it prima facie appears that the suit of the plaintiffs is barred by the Law of Limitation, in my opinion, it would not be appropriate to pass any interim order in favour of the plaintiffs. The notice of motion is therefore, disposed of.

3. As I have taken a view that prima facie the suit is barred by the Law of Limitation, a request at this stage made for continuance of ad-interim order is rejected.